

REMARKS/ARGUMENTS

Favorable reconsideration of this application in view of the following remarks is respectfully requested.

Claims 5-9 are pending in this application. In the outstanding Office Action, Claims 5-8 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Publication 2005/0079898 to Park; and Claim 9 was rejected under 35 U.S.C. § 103(a) as unpatentable over Park.

With respect to the rejection of the claims under 35 U.S.C. § 102 and § 103 over Park, these rejections are respectfully traversed. As discussed in the Amendment filed March 14, 2008, Park does not constitute prior art. The effective prior art date for Park is September 13, 2004. The present application claims priority from PCT/JP04/007870 filed May 31, 2004. Page 4 of the outstanding Office Action cites to MPEP 1893.03(b) B in support of the assertion that the present application cannot claim an effective filing date of May 31, 2004. However, MPEP 1893.03(b) B merely states that if an international application was filed after November 29, 2000 but was not published in English under PCT Article 21(2), the international filing date is not treated as a U.S. filing date for prior art purposes under 35 U.S.C § 102(e). That is, MPEP 1893.03(b) B is discussing the availability of a reference as a prior art reference. For example, if Park were a national stage application from a PCT application, MPEP 1893.03(b) B would provide guidance to determine the availability of Park as a prior art reference.

In the present situation, Applicant is establishing a filing date based on the filing date of the international application. As discussed in MPEP 1893.03(b), “the filing date of the international stage application is also the filing date for the national stage application.” As evidenced in the Notice of Acceptance of Application Under 35 U.S.C § 371 and 37 C.F.R. §1.495 mailed by the PTO on June 7, 2007, all of the 35 U.S.C § 371 requirements were received by the PTO on September 25, 2006. For example, an English Translation of the

International Application was provided to the PTO on September 25, 2006. Therefore, as stated in the Notice of Acceptance, "the filing date of the above identified application is the international filing date of the international application (Article 11(3) and 35 U.S.C. § 363)."

Again, the present application has the effective filing date of international application PCT/JP04/007870, which was filed May 31, 2004. The filing date for Park is September 13, 2004. Thus, Park does not constitute prior art. Withdrawal of the rejection of Claims 5-9 under 35 U.S.C. § 102 and § 103 is respectfully requested.

Reconsideration based on the above arguments is respectfully requested. Further, in response to the January 15, 2008 and June 4, 2008 Rejections, Applicant has not substantively amended the claims in response to any rejection of record. Accordingly, should a further rejection be applied in the next Action based upon newly cited prior art, Applicant submits that such an action **cannot properly be considered a Final Office Action**.

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below-listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.


Eckhard H. Kuesters
Attorney of Record
Registration No. 28,870

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)
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Kevin M. McKinley
Registration No. 43,794